

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

FRANK EDWIN FELLER,

Plaintiff,

V.

**MICHEAL MCCARTY, and N-ZONE
BAR & GRILL,**

Defendants.

4:07CV3117

ORDER ON INITIAL REVIEW

This matter is before the Court on plaintiff's Motion to Proceed In Forma Pauperis (IFP) (Filing No. 2). Upon review of the plaintiff's papers, plaintiff's motion will be granted.

Admonitions

The plaintiff is informed that the Court can later enter an order taxing costs in this case. No one, including the plaintiff, is relieved by this order from the obligation to pay or to reimburse taxable costs after this action is over. In addition, even after a motion to proceed IFP has been granted, the Court may still revoke IFP status and dismiss a complaint under 28 U.S.C. § 1915(e)(2)(B) if the court finds that the complaint is frivolous or malicious. *Kane v. Lancaster Co. Dep't of Corrections*, 960 F. Supp. 219, 222 (D. Neb. 1997) (To determine that a claim is frivolous, the court must find that the claim is based on an indisputably meritless legal theory or that factual contentions are clearly baseless).

Initial Review

The complaint is now subject to initial review pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). When presented with an IFP complaint filed by a nonprisoner, the court is "limited, in terms of sua sponte initial review, to deciding whether the plaintiff's complaint is frivolous or malicious." *Id.* Construed liberally, the Court does not find that the complaint is frivolous or malicious. See *Bracken v. Dormire*, 247 F.3d 699, 702-03 (8th Cir. 2001) ("it is our longstanding practice to construe pro se pleadings liberally").

Summons Forms

Fed. R. Civ. P. 4 requires service of the complaint upon each defendant within 120 days of filing the complaint. Rule 4 provides that if service of the summons and complaint is not made within 120 days after filing of the complaint, the Court shall dismiss the action or direct that service be effected.

IT IS ORDERED:

1. That plaintiff's motion to proceed in forma pauperis is granted, subject to the admonitions stated above.
2. That the Clerk of Court shall send the plaintiff two summonses and two Form-285s together with a copy of this order. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendants on the plaintiff's behalf.
3. That the plaintiff shall, as soon as possible complete the forms and return them to the Clerk of Court; in the absence of the completed forms, service of process cannot occur.
4. That, upon receipt of the completed forms, the Clerk shall sign the summonses and forward them, together with a copy of the complaint, to the U.S. Marshal for service on the defendant; the Marshal shall serve the summons and complaint without payment of costs or fees; service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law, in the discretion of the Marshal.
5. That failure to obtain service on a defendant within 120 days from the filing of the complaint as provided by Fed. R. Civ. P. 4(m) may result in dismissal of this matter without further notice.
6. That after an appearance has been filed by the defendants, the plaintiff shall serve on the defendants or, if an appearance has been entered by counsel, upon such counsel, a copy of every future document submitted to the Court; parties usually serve copies of documents on other parties by first class mail; the plaintiff shall include with each document submitted to the Court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to each defendant or the attorney of a represented defendant; to send communications to the court without serving a copy on the other parties to the case violates the rules of court.
7. That a defendant has twenty (20) days after receipt of a summons to answer or otherwise respond to a complaint.
8. That the plaintiff shall keep the Court informed of his current address at all times while the case is pending; failure to do so may result in dismissal.

DATED this 2nd day of May, 2007.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court